IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7102 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHABEN WIFE OF SIDHDHARTH JYOTIRAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7102 of 2002

MR HR PRAJAPATI ON BEHALF OF

MR SUNIL C PATEL for Petitioner No. 1

MR AD OZA GP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/10/2002

ORAL JUDGEMENT

Leave to amend the name of the detenu is granted.

The present petition has been filed by the detenu through his mother, who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 26/3/2002 passed by the Commissioner of Police, Surat City and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the detenu and also perused the material on record. According to learned advocate for the detenu, the detaining authority has passed the impugned order of detention relying upon two offences registered against the detenu before the Umara Police Station under Indian Penal Code and statements of witnesses. The learned advocate for the detenu has further submitted that the detaining authority has not supplied relevant documents relying on which the detaining authority has passed the impugned order of detention, though the same were demanded by the petitioner by representation dtd.17/6/2002. The learned advocate for the petitioner has further submitted that in absence of the relevant and material documents, relying on which the detaining authority has passed the impugned detention order, the petitioner cannot make an effective representation and thereby the detaining authority has prevented the petitioner from making an effective representation, which is unconstitutional. He has further submitted that it is the duty of the detaining authority to supply all the documents on which the detaining authority has placed reliance for passing the impugned order of detention, but the detaining authority has failed to discharged its duty and hence on this

ground alone, the petition is required to be quashed and set aside. Even no affidavit has been filed by the State authority explaining the action satisfactorily.

4. Since the material documents, relying on which the impugned detention order has been passed by the detaining authority, have not been supplied by the detaining authority to the petitioner, nor affidavit has been filed either by the detaining authority or by the State authority explaining satisfactorily the action of the detaining authority for not providing the documents on which the detaining authority has relied upon while passing the impugned detention order, the petitioner is prevented from making an effective representation and hence the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 26/3/2002 passed against the detenu is hereby quashed. The detenu namely Shashikant @ Shashiyo Sidhdharth Pawar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik